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STEPHEN JOHNSON FIELD

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STEPHEN JOHNSON FIELD





Proceedings in the Supreme Court of the United States.

Monday, April 10, 1899.

Present: The Chief Justice, Mr. Justice Harlan, Mr. Justice Gray, Mr. Justice Brewer, Mr. Justice Brown, Mr. Justice Shiras, Mr. Justice White, Mr. Justice Peckham and Mr. Justice McKenna.

The CHIEF JUSTICE.—It becomes my sad duty to inform the gentlemen of the bar that Mr. Justice Field, on yesterday (Sunday) evening, passed peacefully from this life. He died full of years and of honors, and attended by all that should accompany old age.

The judicial career of Mr. Justice Field was unexampled in length and distinction, and he occupied a seat upon this bench for a longer period than any of its members from the beginning. His labors left no region of jurisprudence unexplored, and, now that he rests from them, his works will follow him. His retirement when he saw port approaching was so recent that he hardly seems to have been absent, and his death comes home to us the more keenly.

As a mark of respect to his memory, the Court will adjourn until tomorrow.

Adjourned until tomorrow at 12 o'clock.

**Proceedings in the United States Circuit Court of Appeals
at San Francisco, California.**

On Monday, the twenty-second day of May, 1899, there assembled in the courtroom of the United States Circuit Court of Appeals one of the largest and most distinguished gatherings ever congregated upon the Pacific Coast. The day was set apart by the members of the bench and bar to pay tribute to the memory of Mr. Justice Field. Not only was the legal profession represented by its leaders, but many men distinguished in other professions and in business were present. A number of ladies also bore witness to the affectionate regard entertained for the memory of the departed jurist.

The resolutions of the San Francisco Bar Association were read by Mr. Edward R. Taylor, and, upon his motion and the motion of Hon. John Curry, after appropriate remarks made by the senior Circuit Judge, were ordered spread upon the minutes of the Court.

The minute entry is as follows:

At a stated term, to wit, the October term, A. D. 1898,
 of the United States Circuit Court of Appeals,
 for the Ninth Circuit, held at the courtroom, in
 the city and county of San Francisco, on Monday,
 the twenty-second day of May, in the year of our
 Lord one thousand eight hundred and ninety-
 nine.

Present:

The Honorable WILLIAM B. GILBERT, Circuit
 Judge; Honorable ERSKINE M. ROSS, Circuit
 Judge; Honorable WILLIAM W. MORROW, Cir-
 cuit Judge; Honorable THOMAS P. HAWLEY,
 District Judge.

In Memoriam,
 Honorable STEPHEN JOHNSON FIELD,
 Deceased.

A memorial having been read, on motion of Edward
 R. Taylor, Esquire, John Curry, Esquire, having been
 heard, and after remarks by the Court, through Hon-
 orable William B. Gilbert, senior Circuit Judge,

Ordered, same spread upon the minutes of the Court

In Memory

—OF—

STEPHEN JOHNSON FIELD.

When such an imposing and interesting figure as that of Judge Field passes out of the sight of men, it is fitting that some especial note be taken of the important event. More than such a note would, on an occasion like this, be inappropriate and indeed impossible. To properly present his career would involve the labor of a biographer. It is proper, however, that we should briefly call to mind some of the most important events of his life.

Stephen Johnson Field was one of seven brothers, and was born at Haddam, Connecticut, on the fourth day of November, 1816, and died in Washington on the ninth day of April, 1899. He was graduated with honors from Williams College in 1837, and, having been admitted to the bar, joined with his brother Dudley in the practice of the law at the city of New York. This partnership was relinquished in 1849, after an extended European tour, in order that he might come to California. He took passage for this State on the thirteenth day of November, 1849, and reached San Francisco on the twenty-eighth day of December of the same year. Not long afterward he went to the stirring mining camp now known as the

city of Marysville, where, on the eighteenth day of January, 1850, he was elected first alcalde. Later in the same year he was elected to the State legislature, and served throughout the important session of 1851. He was chairman of the judiciary committee, and was concededly one of the very leading members of that legislature. He was elected to the Supreme Court of California in 1857, and took his seat on the bench of that Court on the thirteenth day of October of that year. Two years later he became Chief Justice, which office he held until his appointment by President Lincoln to the bench of the Supreme Court of the United States. His commission was dated March 10, 1863, and he took the oath of office on the twentieth of May, following. He served continuously on that bench until his resignation on the twelfth day of October, 1897, having had, at the time his resignation took effect on the first day of December following, a judicial career there of thirty-four years and seven months—the longest in duration of that enjoyed by any of his predecessors. His industry as a judge is largely shown by the fact that he prepared while State supreme judge three hundred and sixty-five opinions, and, while United States supreme justice, six hundred and twenty opinions, and, besides these, fifty-seven as circuit justice.

In addition to these judicial labors, he, with Jackson Temple and John W. Dwinelle, served in 1873 as a commissioner to examine the codes of California, and to prepare amendments thereto. He was also a member of the electoral commission of 1877 and was

one of the seven members who voted for Tilden. At the time of his death he was a trustee of the Leland Stanford, Jr., University.

Of all the striking personalities that have made California singularly interesting, none is more striking than that of Judge Field. He came, as did the others, in the fullness and freshness of young manhood, to a virgin field of endeavor, the like of which the world has never elsewhere seen. He entered into the life of the time with strength of leadership from the very beginning. His was the shaping hand that drew order out of chaos in the community where he first became active as a public man; his was one of the shaping legislative hands at the very beginning of California's political life; no other one man contributed so much as he to the settlement of her land titles; and as a judge no other one hand has made such an impression upon her judicial history. And when he left the State supreme bench for the higher station of the federal tribunal, his lustre was not dimmed by that of the great men about him, but it shone with such additional brilliancy as to make him beyond all question one of the greatest judges this or any other country has produced. In fact, to quote the language of Chief Justice Fuller, "His judicial career was unexampled in length and distinction. * * * * His labors left no region of jurisprudence unexplored, and, now that he rests from them, his work will survive him."

Judge Field not only shone as a jurist by reason of his great and varied learning, his acute intellect, his

great grasp of the subject in hand and of the principles of law applicable to it, but as a judicial writer. Certainly there are no opinions in the reports of the Supreme Court of the United States which surpass those of Judge Field in lucidity, orderly presentation and force of reasoning. His style was eminently judicial, and his sentences well-framed and never involved nor ambiguous. It is by reason of these qualities that his opinions are almost unique in judicial literature; and it is perhaps not going too far to assert that his dissenting opinions are the most noted, taking them as a whole, of those of any judge who ever sat upon the federal supreme bench.

He was masterful and courageous. Like all such men, he was positive in everything; and no man ever held to a deliberately formed opinion with more tenacity than he. He was uncompromising when he once took a position, and never feared any consequence which might flow from decision or judgment of his. He felt the importance and dignity of the judicial office as deeply as any man who ever wore the ermine, and that office he ever maintained at its highest. He had been well trained for the judgeship, and he came to it with a learning and a culture rarely equalled. Taking him for all in all, he was not only one of the most interesting and capable of the many public men who have made our country distinguished, but he played an important and illustrious part in the formative life of California; and he now rests from his labors with such distinction as has seldom fallen to the lot of a judge.

Hon. WILLIAM B. GILBERT, Senior Circuit Judge.—It is fitting that the records of this Court shall express a becoming recognition of the services of the distinguished justice who presided at its organization and who for so many years occupied the place of the leading jurist of the Pacific Coast. It is impossible from the perspective of the present to justly estimate the importance and value of his judicial work. His labors upon the bench covered a period of more than a third of a century. It began with the formative period in this, his adopted State. California had been but recently a foreign country, with an alien people and foreign laws. Largely through his judicial decisions was disentangled the confusion of Spanish and Mexican grants and the conflicting claims of the American settlers. He became a member of the Supreme Court just before the close of the Civil War, and at a time when questions of the greatest import confronted the country—questions of the reconstruction of the States and of the interpretation of the new constitutional amendments which were induced by the new conditions which followed the war. It may be said that they were the most difficult and momentous questions that have ever been presented to the consideration of that tribunal. The contributions of Judge Field to the legal learning which had elucidated the meaning of those amendments will always constitute his greatest and most enduring monument—with his name will ever be associated the fixed definitions of due process of law, of the rights of property and of personal liberty. His decisions attest

the legal learning and acumen of his mind as well as the great clearness and vigor of his style. They cover a period of more than thirty years, during which the country was constantly called upon to meet new questions arising out of the extraordinary growth of industries, the evolution of inventions, the development of wealth, and the agglomeration of capital in great enterprises. Judge Field was among those who believed that the Supreme Court did not lack the power to deal with new exigencies, to meet new conditions, and to afford its protection to new interests as they developed with the growth of the country. The value of his work may not now be estimated. It may be safely consigned to the judgment of posterity. When he went upon the bench Taney and Wayne were still members of the Court and he afterward was associated with such men as Miller, Davis, Waite, and Bradley. It may be safely said that Field was the peer of any. It is because the Supreme Court has for the most part been composed of such men—men selected from the best and highest that the country has afforded—that the Court has from the beginning been the mainstay of the Constitution, and its decisions have commanded the unhesitating obedience and respect of the people.

Proceedings in the Circuit Court of the United States for
the District of Washington.

In the Matter of the Resolutions in
Memory of
Honorable STEPHEN JOHNSON FIELD. }

Gen. J. B. METCALFE.—In response to the reference of the Court to a committee to prepare suitable resolutions in memory of the late Justice Field, I desire to make the following report now to the Court:

“The members of the bar, to whom this honorable Court referred the motion to submit suitable resolutions in memory of Honorable Stephen J. Field, late associate justice of the Supreme Court of the United States, and Circuit Justice of this, the Ninth Circuit, beg leave to present, with the subjoined resolutions, a brief sketch of the life and career of one of the most remarkable among the many distinguished men of America.

Justice Field was of a family around whose members, in the same generation, the laurel leaves have entwined in lavish profusion.

David Dudley Field, by his reformed system of procedure in Courts, revolutionized the methods of administering justice, and simplified them among those places where the English common law was in force.

Cyrus W. Field, by his quenchless enthusiasm, tireless activity, and unfaltering faith, became the leader in that triumphant assimilation of science and commerce by which space was obliterated and the converse of the world became a mere routine in the daily affairs of men.

The third son, Stephen Johnson Field, is the subject of this sketch.

The fourth, Henry Martyn Field, still living, is distinguished as an eminent divine, editor and littérateur, and all are equally well-known and honored throughout Europe, as in their own country.

An elder sister was the immediate maternal ancestor of the Honorable David Josiah Brewer, of the Supreme Court of the United States, who, since 1889, was an associate with Mr. Justice Field in that august tribunal.

At the age of thirteen years he accompanied the Rev. Josiah Brewer, who was married to an elder sister, to Smyrna, where he remained two years and half, learning the modern Greek language, so that he spoke it fluently, as well as acquiring, during his foreign sojourn, the French, Italian and Turkish. This foreign life enlarged his ideas. Educated in the strictest school of the Puritans, he became tolerant of religious opinions which differed from his own. The devotional fervor of the Moslem at morning, noon, and sunset impressed him as a lesson for the Christian. In 1832 he returned to America and entered Williams College. He was graduated in 1837, and delivered the valedictory oration—the highest honor of

his class. He subsequently entered the law office of his brother, David Dudley, in New York city, and in 1841 was admitted to the bar, became his brother's partner and continued in the practice of his profession for seven years.

At this time the glittering stories of the fabulous wealth of the mountains and streams of California captivated his adventurous spirit. An empire had appeared upon the shores of the great sunset sea, which seemed almost to have been taken from the pages of the "Arabian Nights." Its scope offered an unmeasured field for the ambition of the young lawyer, and, on December 28, 1849, he landed at the city of the Golden Gate with an abundant stock of courage and ten dollars in his pocket.

January 18, 1850, found him aiding in the organization of the town of Marysville, California, at the junction of the Yuba and Feather rivers, and, upon the establishment of the town government, he was elected first alcalde. The position was a very trying one, but the firm attitude he maintained against lawlessness enabled him to fill the position with great satisfaction to his fellow townsmen.

In 1851 he was elected to the legislature, and at this period the splendid abilities, which have placed his name so high upon the scroll of fame, first were given the opportunity of displaying the hidden treasures of thought and learning, which has since been impressed upon, and, in several instances, shaped, our national destiny. During the session of that legislature he did more than any other individual in constructing the

framework of the system of laws of California. He lived among miners; he learned the rules by which they regulated the possession and development of their claims; he had slept in their tents, ate at their camps, and heard the stories of mining life. He recognized that strict justice was the basis upon which their system of "local law" was founded. He took at once a leading position. He directed the attention of that body to the protection of that industry, which early opened the way to the marvelous growth and richness of the great commonwealth of California. He saw that wisdom lay in giving the sanction of the law to rules which the miners had set up for holding possession and control of mining properties. Accordingly, he framed and had adopted into a general statute regulating proceedings in civil cases in the State Courts the following provision:

"In actions respecting 'mining claims,' proof shall be admitted of the customs, usages, or regulations established and in force at the bar, or diggings, embracing such claims; and such customs, usages, or regulations, when not in conflict with the constitution and the laws of this State, shall govern the decision of the action."

This principle was adopted by other mining regions, and was finally incorporated in the federal law. It helped to mould the magnificent future of California, and was influential to a remote degree in its effects, in generously fostering the industrial resources of that State. It added untold wealth to the country. Its wisdom has never been questioned, and, years af-

ter the lasting benefits of that legislation is commented upon in the case of *Jennison v. Kirk*, 98 U. S. 457. He framed the law of exemption from forced sale—the mechanic's tools, the farmer's plow and oxen, the surgeon his instruments, the lawyer his library, the property of judgment debtors—save for the purchase money. It was broader than any eastern law of like character.

He reorganized the judiciary of that State. He prepared separate bills to regulate the civil and the criminal practice. These were based upon the civil and criminal procedure proposed by the New York commission, modified to suit the social conditions and habits of the people of California. They were not bare copies of the proposed New York law, for he altered and reconstructed over three hundred sections and added over one hundred new ones; these became the civil and criminal practice acts of the State, and have been substantially adopted by the States and Territories west of the Rockies. He acquired, during the session, a reputation for untiring industry, zeal, and devotion to the public service.

In 1857 he was elected to the supreme bench of the State of California; a vacancy occurring before his term of office began, the Governor appointed him to fill the vacancy, although a political opponent, and, upon the resignation of Hon. David S. Terry, he became the Chief Justice. His clearness of mind, and his understanding of the great principles of the law, were never confused or deceived by the brilliant efforts of the many master minds at the bar of that Court.

In 1863, when the increasing importance of the Pacific States became manifest, a new circuit became necessary. By an act of Congress, June 22 of that year, it was provided that the Districts of California and Oregon should constitute the Tenth Circuit. Legislators, senators, members of all parties, besought President Lincoln to appoint Judge Field to this new circuit. By executive order, Judge Field was so assigned. This order and number of circuits continued in force until reduced by law to the present number, and Judge Field allotted to the Ninth. Hon. J. G. Baldwin, his associate upon the supreme bench of California, said: "By this event the State has been deprived of the ablest jurist who has ever presided over her Courts." His commission was dated March 10, 1863, but he did not take his oath of office until May 20 of that year, partly because of cases he had heard, and partly from sentiment, as he wished to celebrate the birthday of his father, who would reach the age of eighty-two years at that date.

When he ascended the supreme bench, it was to take his place among an illustrious galaxy of brilliant and profound jurists; Taney was chief justice, and Wayne, Catron, Nelson, Grier, Clifford, Swayne, Miller and Davis associate justices. There was no tribunal in the world of more exalted functions. In the language of a learned writer there were "Legal questions of a countless number and variety, affecting private rights, and involving every department of jurisprudence—common law and equity, admiralty, maritime and prize law, patent law and copyright, the civil law

as embodied in Louisiana and Mexican codes, statutes of Congress and State legislatures—everything, except pure matters of probate, may come before that Court for adjudication. Probably no other single tribunal in the world is called upon to exercise a jurisdiction extending over so many different subjects, and demanding from its judges such a variety of legal knowledge.” The element of transcendent importance, which elevates that Court above any other judicial tribunal, is its authority as a final arbiter in all controversies involving the construction of the federal constitution and determining the bounds beyond which neither the national nor State governments may transgress.

He was possessed of the highest order of physical and moral courage—he was absolutely fearless. These great qualities were conspicuously displayed on several memorable occasions. Whether called upon to express his enlightened convictions of the law from the bench, in the face of heated popular disfavor and prejudice, or meet in private life a personal danger, he exhibited the same unruffled exterior and unflinching bravery. In the early days of California, the code duello was not infrequently the arbiter appealed to in the settlement of disputes. Judge Field, while never having actually engaged in the exchange of shots, never declined to meet an antagonist when challenged to the field of honor. He displayed the same calm resolution during all the trying moments surrounding the awful tragedy which cast its shadows over his otherwise happy life. When warned that he should arm himself

for self-defense, before the happening of that tragic event, his answer showed the grandeur of his conception of the judiciary of the republic: "When it comes to such a pass in this country that judges of the Courts find it necessary to go armed, it will be time to close the Courts themselves." In his rigid maintenance of the basic truths of the federal constitution in all their simplicity and strength, he was almost without a peer upon the bench. An eminent legal writer has said: "The principles which underlie all of Judge Field's work in interpreting the constitution, and to which he has constantly adhered, whether acting with the Court or dissenting from it, are summed up in two ideas: 'First.—The preservation from every interference or invasion by each other of all the powers and functions allotted to the national government and the State governments; and, Second.—The perfect security and protection of private rights from all encroachments, either by the United States or by the individual States.' " These two ideas run through his decisions. He never faltered in upholding constitutional guaranties, even in the face of angry popular passions. This characteristic is strikingly exemplified in several famous cases.

One of the first was the Milligan case. In October, 1864, six months before the close of the Civil War, Milligan, a resident of Indiana, was arrested by military order for conspiring against the government, inciting to insurrection, disloyal practices and violation of the laws of war, and was thrown into prison. Amidst the bitterness and excitement of war, the au-

thorities were disposed to make quick work of treason, and Milligan was found guilty and sentenced to be hung. The proof probably was ample, but he was not a resident of a State in rebellion, nor was he in the naval or military service, nor under military authority. Indiana was not in rebellion, nor in a state of siege, and there was no excuse for martial law. The Courts were open, and had ample power to punish, but this did not satisfy the eager demand for punishment of his offense, and to crush summarily any and all opposition to the government of the Union. Even the great and merciful heart of President Lincoln was moved to uphold the military commission. He approved the sentence, and ordered it carried into execution. Milligan would have been hung but for the powerful arm of the Supreme Court. All the justices were unanimous in decreeing that the man should be set at liberty. Judge Field was one of the five justices who emphasized this celebrated decision, and, referring to Mr. Justice Davis, who wrote the opinion, pays him a high tribute—in upholding the guaranty of trial by jury, contained in the constitution, as being “intended for a state of war as well as peace, and is equally binding upon rulers and people at all times, under all circumstances.”

The public excitement produced by this case had not subsided when the Court was called upon to determine the equally celebrated “Test Oath” case. In the constitution of Missouri, just then adopted, was incorporated, under the angry passions of the war, a provision requiring, as a condition of holding any of-

fice of honor, trust or profit, that the "ironclad oath" should be taken. The person must swear that he had never had anything to do with the rebellion, and never favored it secretly or openly. It extended not only to his acts, but secret motives and feelings. It contained more than thirty distinct affirmations. He could not teach school; he could not practice law; he could not be a trustee of a church, or an officer of a corporation; he could not preach the gospel; he could not administer the sacraments. A priest of the Roman Catholic Church, Rev. Father Cummings, was indicted in that State for the crime of teaching and preaching without taking the oath; was convicted, fined five hundred dollars, and committed to jail until the fine was paid. The Supreme Court of Missouri affirmed the judgment. It was then taken to the Supreme Court of the United States. Four of the nine justices voted to sustain this legislation. Justice Field gave the casting vote against it, and wrote the opinion by which its proscriptive requirements were annulled—declaring it to be beyond the power of a State of the American republic to enact.

In the noted "Legal Tender" cases he stood with Chief Justice Chase against the constitutionality of the act of Congress, making the promises of the government a legal tender for the payment of debts. He could not agree with his associates that Congress possessed the power to make the promise of a dollar the equivalent to the dollar itself.

In the "Slaughter-House" cases of New Orleans, Louisiana, he gave a wider application of the four-

teenth amendment of the constitution than the majority of the Court. He argued that the amendment was designed to prevent discriminating legislation against any class of citizens, whether white or black. Mr. Justice Field, dissenting and speaking for the minority, objected to law of that State in that it transcended the limits of the police power of the State and asserted a right to farm out the ordinary vocations of life.

He contended for the inviolability of contracts, when the validity of the Thurman act, relating to the Pacific railroads, was before the Court, and that an engagement once made by a State or by an individual is sacred, though difficult of fulfillment; "that it is the mark of a just government as of a just man—that it sweareth to its own hurt and changeth not."

He never courted popularity, nor shrunk from popular rancor because of his decisions. In the language of Lord Mansfield, he "wished popularity, but it is that popularity which follows, not that which is run after; it is that popularity which, sooner or later, never fails to do justice to the pursuit of noble ends by noble means." Of him Professor Pomeroy said he always "faithfully discharged his sacred duty of deciding according to his own enlightened convictions of law and justice, in complete oblivion of all external forces, and in absolute fearlessness of the consequences." This characteristic in one instance aroused against him considerable prejudice and public clamor. He had the high and laudable ambition to become the President of the United States, but when the conven-

tion in his State was held, he found a strong element against his candidacy by reason of his decision in the famous "Queue" case. The legislature of California had enacted what was known as the "Cubic Air Law," providing, among other things, that any person found sleeping in a room or apartment containing less than five hundred cubic feet of space in the clear, should, upon conviction, be fined or imprisoned, or both fine and imprisonment might be imposed. The board of supervisors of the city and county of San Francisco thereafter enacted what is known as the "Queue" ordinance, which declared that any male person, imprisoned in the county jail, under the judgment of any Court having jurisdiction in criminal cases in the city or county, should immediately, upon his arrival at the jail, have the hair of his head "cut or clipped to an uniform length of one inch from the scalp thereof," and imposed upon the sheriff the duty of its enforcement. Both acts were aimed at the Chinese, large numbers of whom were residents of San Francisco, and filled many avenues of labor in the life of that city. A Chinaman was arrested and fined, and, failing to pay his fine, was imprisoned. The sheriff, during his imprisonment, cut off the Chinaman's queue. Upon his release, he sued the sheriff, alleging that he had been damaged in the sum of ten thousand dollars; that it was the custom of his countrymen to wear their hair braided into a queue; that the deprivation of the queue was regarded by them as a mark of disgrace, and, according to their religious faith, was attended with misfortune and suffering af-

ter death; that it was a venerated custom, and that now he was disgraced and ostracized by his friends and countrymen, etc. The ordinance was treated by Judge Field as special legislation on the part of the supervisors, directed against a class, and that they could not add to punishment prescribed by the legislature; that it was the imposition upon the Chinese of a degrading and cruel punishment, which was forbidden by that clause of the fourteenth amendment to the constitution which declared that no State "shall deny to any person within its jurisdiction the equal protection of the laws." The popular feeling against the Chinese was intense, and the decision created great bitterness toward Judge Field. Personally, he never favored the indiscriminate immigration of Chinese.

Some public prejudice had also been animated against him, which also contributed to the element against his candidacy, because of his supposed leaning to the great corporations of the country. As time has glided by and the full effect and scope of the many decisions he rendered upon this subject are calmly and critically reviewed, the injustice done the great jurist on account of these decisions is manifest.

His decisions in cases affecting the pretensions of large corporations prove that his purpose was ever to apply the law, and hew to the line, let the chips fall where they may. In Chicago he will be remembered chiefly as the writer of the opinion of the Supreme Court which finally confirmed the public ownership of the lake shore fronting that city, against

the title set up by the Illinois Central Railroad Company. The decision is far-reaching in its effect upon titles which other corporations have tried to secure to holdings of immense value in the harbors of great commercial cities.

It would compass the pages of an extensive volume to detail his great career upon the bench, where he has left to his countrymen a rich storehouse of learning, profound understanding of the great principles of the law, and legal acumen, and which has been indelibly implanted in the jurisprudence of our country by one of the most masterful minds of this age. It is said that he alone wrote six hundred and twenty opinions of the Supreme Court, and previously prepared fifty-seven opinions in the Circuit Court, and three hundred and sixty-five in the Supreme Court of the State of California. He remained upon the bench of the Supreme Court of the United States thirty-four years, six months and eleven days, being one month and six days longer than the term of any other justice.

Although written but a short time before the close of his career, Justice Field's individual opinion in the "Income Tax" cases is one of his greatest mental achievements. The diction is, like all of his opinions, lucid and vigorous, but without breaking the calm, judicial and conservative flow of reason, evincing depth of thought and integrity of purpose. This opinion conclusively demonstrates that at least his own mind was convinced of the unconstitutionality of the income tax of 1894, and that its absolute unfairness, with its exceptions and exemptions, designed to dis-

criminate and operate unequally in the different States.

At all times, whether upon the bench or amidst a social circle, he was ever courteous, calm and resolute, his voice and manner having the tenderness of a woman. In private life he was loved and admired for his virtues and amiable character. Prominent among his many shining qualities was his fondness for the society of, and his unswerving loyalty to, his friends.

Be it then resolved:

That the life and career of Mr. Justice Field is an exalted example for the aspiration of all members of the profession to follow;

That his great labors and his untiring zeal in the public service, while a member of the grandest legal tribunal of any country, have erected an imperishable monument to his name, which his countrymen will ever venerate;

That, in his death, America has been deprived of a patriot of unswerving loyalty; of a citizen whose highest ambition was to foster, protect and perpetuate the principles of American liberty; of a jurist who has impressed his genius upon the jurisprudence of the republic, and guided its destiny in the paths of virtue and honor;

That he has left an illustrious name and memory, which is now and for all time will be honored and esteemed in both hemispheres.

J. B. METCALFE,
W. H. GORHAM,
JOHN P. HOYT."

I now move that the report be entered at large upon the records, or that such other disposition of the same be made as your Honor may order.

In supporting the motion eloquent tributes to the memory of Mr. Justice Field were spoken by the following gentlemen: Judge Thomas Burke, Hon. E. C. Hughes, Col. R. H. Lindsay, Col. James Hamilton Lewis, Hon. John Arthur and Hon. Orange Jacobs.

Judge C. H. HANFORD.—I consider that the afternoon could not have been spent with greater profit than in turning aside for a short time from our ordinary pursuits, to consider the grand character of Justice Stephen J. Field. He is, and will ever be, regarded as one of the great figures in the history of American jurisprudence, and it is profitable to us as lawyers, and as American citizens, to pause for a time and contemplate his greatness as a jurist, as an American citizen, and as a man.

I consider that the committee, in the tribute which they have prepared and submitted, have rendered a valuable service in preparing so fitting a tribute to so great a character; and the gentlemen who have participated in these proceedings, and by their eloquent words have set before the audience so much that it is profitable to think about in regard to the great subject of "Liberty regulated by law," have, in my estimation, conferred honor upon themselves as well as upon the memory of the distinguished man to whom their words refer.

Justice Field, by reason of his own greatness and

by reason of the fact that he was the senior member of this Court, is entitled to all honor which we can bestow upon his memory. In so recognizing his merits, it is ordered by the Court that the report of the committee be spread at large upon the records of this Court, and that a certified copy of the record of this day's proceedings, relating to this tribute in his memory, be forwarded to Mrs. Field, his widow.

**Proceedings in the Circuit Court of the United States for
the District of Montana.**

Second Day, April Term, A. D. 1899, United States
Circuit Court, District of Montana, Monday, the
tenth Day of April, 1899.

Present:

Honorable HIRAM KNOWLES, United States
District Judge, for the District of Montana.

In the Matter of Resolutions on
the Death of
Honorable STEPHEN JOHNSON FIELD,
Deceased.

Hon. W. F. Sanders, Hon. H. N. Blake and Hon.
B. P. Carpenter are hereby appointed as a committees
to draft suitable resolutions for presentation to the
Court, Monday, April 17, 1899.

Third Day, April Term, A. D. 1899, United States Circuit Court, District of Montana, Monday, the seventeenth Day of April, 1899.

Present:

Honorable HIRAM KNOWLES, United States District Judge for the District of Montana.

In Memoriam

STEPHEN JOHNSON FIELD.

Mr. Justice Field died at Washington, D. C., on the ninth day of April, 1899.

On the tenth day of April, 1899, the Court appointed, as a committee to prepare and report resolutions for consideration, Hon. W. F. Sanders, Hon. B. F. Carpenter and Hon. H. N. Blake. They reported the following resolutions:

The Court and members of the bar of the Ninth Judicial Circuit for the District of Montana desire to express and place upon record their sense of loss in the death, on April 9, 1899, of the Honorable Stephen Johnson Field, an Associate Justice of the Supreme Court of the United States, and assigned by his brethren of that Court as the presiding Justice of this Circuit;

For fifty years he was identified with the practice and the administration of the law, most of the time as a Judge in three several Courts with which he indelibly identified his name. The qualities of mind which contributed to his great usefulness were a keen perception, a faultless logic, a strenuous insistence

upon law, profound learning, a dauntless courage and intense conscientiousness which made thought of surrender to him impossible. In the administration of public justice, he left no refuge for sophistry, but gathered the truth from the outmost verge of all the facts and decisions which illuminated the cases which he tried. He was impatient of subterfuge and scorned any matter which appeared to him like blackmail. He was condescending and amiable to all members of the bar endeavoring to assist him in the administration of public justice, however much he might differ with their arguments and conclusions.

In the domain of the practice of the law, of local legislation and in interpreting the laws from the bench, he was the most conspicuous pioneer of the West, to which portion of the country he was ever loyal, and, to introduce it creditably to the older communities of the East, he counted no labor dear. His decisions from the bench, extending over a period of nearly forty years, are landmarks in judicial history. Rugged and vigorous of intellect, a master of perspicuous speech, he illuminated his decisions with great learning and fortified them with an unanswerable logic. In his death a light has vanished from our legal sky, and we wish to recall and place upon perpetual record our sense of the great obligation which the profession and the Courts are under for all these great services rendered to us and to mankind, and we respectfully request that this mention of his services and fame be spread upon the records of this Court, and a copy be furnished to the family of the deceased."

And thereupon, Hon. W. F. Sanders addressed the Court as follows:

"I desire, if your Honor pleases, to add to the memorial of the committee some words of my own. The life of a great lawyer engaged in the administration of public law is a signal circumstance in human history. Whatever the clamor of ignorance may say, it is a tradition of the bar, founded upon immutable fact, that human liberty, in the keeping of the lawyer, reposes securely upon the wise administration of law, which is an inexorable rule of action to be applied to all human affairs that shall come within its compass, whether the result in the single instance shall be absolute justice or no. For it was a wise remark of one of our illustrious citizens that the true method to secure the repeal of an unjust law was its rigorous enforcement, and the excellence and continued improvement of the common law has resulted from the fidelity of the judges to its authorities. Every abstract rule, constituting a part of it, every provision of constitutional law, has arisen from some concrete contention between litigants in tribunals having its determination, and there is no greater mistake than to suppose that in the instance before the Court, because in the opinion of the judge or jury the application of the abstract rule of law would work an injustice, therefore, it is excusable or desirable to disregard it. Because of the enforcement of these rules upon all questions and under all conditions, the common law has become a science upon which reposes security for human life, and protection of person and

property in a degree unexampled by any other system of government which the world knows. Its ramifications extend to every instance of human activity, and it is everywhere the shield and protection alike of the weak and the strong, and whenever its vigor is relaxed, infinite peril surrounds every right and interest which mankind holds precious.

No judge upon the bench, no juror in the box, no lawyer at the bar, has a right to appeal for a relaxation of these great principles which constitute the glory of Anglo-Saxon civilization, and are known to us all as the common law.

The conception of its excellence was the guiding impulse of Associate Justice Field. Upon the bench he permitted no subterfuge to escape his observation, no sophistries to control his judgment, and, piercing through every pretense, he came to the substantial controversy and determined it in the light of those luminous utterances which, through all the years of authentic history, have been preserved for the guidance and enlightenment of mankind. His reading all ministered to qualify him for the duties of the bench. The trifling tales of the novelist did not divert him from biography, from history, from works of philosophy and morals, and, although he entered upon his life's duties well qualified for their discharge, he perpetually reinforced himself by keeping apace of all the discoveries in science, of all the contributions to human knowledge, until he became a veritable Gibraltar of the law, a rock around which the waves of passion and ignorance and greed vainly broke—with disciplined powers, with commanding traits of intellect—until, by

patient industry, he has written his name among the great lawyers of the world and achieved for himself a permanent fame.

He had the comprehensive observation of John Marshall, the acute perception of Roger B. Taney, the remorseless logic of Robert G. Grier, the unswerving patriotism of Salmon P. Chase, the potent industry of Samuel F. Miller, the benevolent, unfailing philanthropy of Morrison R. Waite, and the Ninth Judicial Circuit, that contributed him to the most conspicuous judicial tribunal the world knows, has abundant cause to congratulate itself that so accomplished a publicist wrought, on so conspicuous a theatre, in its behalf and name, such illimitable and interrupted good.

It was my fortune to know Mr. Justice Field, and if I were to mention the quality noticeably conspicuous in his character, I would say he had the excellence of being strenuous. Upon the great questions which he was called upon to discuss, and which his tribunal determined, he manifested a conscientious insistence upon that which seemed to him to be right. In proportion to its consequence he gave his services to its vindication beyond peradventure.

When such controversies impended, he coveted no personal ease, and upon the bench never allowed the inclination to avoid responsibility to possess him for an instant. The case involving little, the litigant of humble origin and position, commanded the exercise of his great powers in their pristine vigor, and he was as alert and attentive as when the great controversies which swayed the destiny of the country were being

considered by him. To them he gave his vigorous power of reasoning, his commanding qualities of intellect, the best discipline of his mind, with the same fidelity that he manifested on more conspicuous occasions.

The four brothers of this family, who survived to mature years, and each of whom, in some walk of life, became conspicuous, had many traits of character in common. The pertinacious labors of David Dudley Field, who took out of the domain of uncertainty and guessing and placed in the form of the statute the principles of the common law, are a part of the history and pride of our profession. That the people of the continents and islands of the sea might whisper with each other through ocean cables, another brother crossed the ocean an hundred times, and achieved an honorable fame in the accomplishment of that miraculous result. And yet another brother, on a theatre of human activity as widely useful, survives to accomplish benignant results for humanity, whom, as he yet lives, it is not fitting here to praise; but the definite aim, the industrious, uninterrupted struggle for its accomplishment, characterized them all; and, whether we shall study Mr. Justice Field's career as the alcalde of Marysville, the legislator in California, the justice of the Supreme Court of that State, the associate justice of the Supreme Court of the United States, or the presiding justice of this Ninth Judicial Circuit, we shall behold a servant of the people who, through his entire career, brought his storehouse of learning to the discharge of high duties and with lofty aims. Such a service is honorable to him and

valuable to us. His great contributions to the science of the law, made manifest in our mining regulations and water rights, will perpetuate his services, not merely on the western shores of this continent, but wherever geological and industrial conditions make their wisdom applicable.

Mr. Justice Field maintained to the last an interest and pride in the circuit to which he was assigned, and which was for half a century his home.

He often lamented that his duties at the capital of the nation denied him the pleasure of rendering service in the Courts of his circuit, and it is not many months ago that he wrote me of his purpose to visit us here in Montana.

No lawyer from the Ninth Circuit appeared in the Supreme Court to whom he did not manifest unfailing kindness and condescension. If in that august presence, rich with great contentions and hallowed by illustrious names, inexperience became nervous, Mr. Justice Field had the happy faculty of allaying the solitudes and making the lawyer feel at home.

The English lawyers for many generations would inquire if Sir Matthew Hale really so decided, and, if so convinced, no more thought of contending against his utterances than if they found them in Magna Charta. Mr. Justice Field lived his judicial life in more tempestuous times and could not hope for so universal a concurrence, but his decisions were always of commanding import and lawyers dissented hesitatingly.

He never considered the personal consequences of his decisions, having a high disdain for what one of

the eminent chief justices of New England denominated "that most infamous character, a popular judge."

Some of his decisions, and many of his dissents, which were greeted with contemporaneous and somewhat indignant popular condemnation, did much to calm the passions which civil strife had engendered, and are now something more than words, having become facts in history.

In social life he was charming, in conversation instructive, in friendship cordial, but upon the bench he knew nothing but the case before him, the testimony and the law. A long life thus devoted to the interests and welfare of his country is closed, and he has richly earned the repose of the grave. Not in the public eye, where the applause of listening senates distributes fame, do the great judges of our country render their illustrious service, but, when the philosophic historian shall apportion the earned rewards of conspicuous service among those who have contributed to the greatness of the country, the judicial tribunals will receive their just recognition, and our great Associate Justice Field will be given a garland of unfading renown."

Judge Knowles said he had intended to prepare a suitable response to the address, but, owing to circumstances, he had been unable to do so.

The minute and resolutions of the bar, and the remarks of Hon. W. F. Sanders, will be entered on records of the Court and a copy furnished to the family of the deceased.

OBSEQUIES.

Funeral Services over the Remains of Mr. Justice Field.

To render the last honors to a distinguished American a large number of persons notable in civil and official life, including foreigners of rank, gathered at Epiphany church, in Washington City, which he had attended for over thirty years, at 10:30 o'clock, to attend the funeral services over the remains of the late Associate Justice Field of the United States Supreme Court. In keeping with the life and character of the departed jurist, the services were simple and unostentatious, though marked with deep feeling.

The services at the church were performed by Bishop Satterlee of the diocese of Washington, and the Rev. Dr. McKim, rector of Epiphany Church. When the casket bearing the remains was brought into the church, it was met at the head of the aisle by Bishop Satterlee and Dr. McKim, clad in the vestments of their order, who led the procession to the chancel. Following the casket were the chief justice and associate justices of the United States Supreme Court, acting as honorary pallbearers. Behind them came the members of the family and the immediate friends, who were sharing the bereavement of the late justice's relatives.

Dr. McKim read the epistle for the funeral service, and Bishop Satterlee delivered the appropriate pray-

ers. The full service was read, including the committal. The choir sang "Nearer, My God, To Thee," the congregation joining, and Mr. Griffith, a member of the choir, sang, as a solo, "Rock of Ages." The service was short, according to the Episcopal ritual, but was very beautiful and impressive. At the conclusion the remains were taken to Rock Creek cemetery and placed temporarily in a vault. The interment was private, and was attended only by the family, the nearest friends, and the members of the Supreme Court of the United States.

Before the remains were brought to the church there was a brief service of prayer at the house, conducted by the Rev. Edward M. Mott, who for many years has been an intimate of the family. The prayers were attended only by the family and close friends.

